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Arnold
Schwarzenegger

**NOTICE OF PUBLIC HEARING TO CONSIDER IMPOSITION OF
ADMINISTRATIVE CIVIL PENALTIES**
in the matter of

THE CITY OF FORTUNA

The California Integrated Waste Management Board (CIWMB) has scheduled a public hearing, in accordance with Public Resources Code Section 41850 (Attachment 1), in order to determine whether or not to impose administrative civil penalties against the City of Fortuna, for failure to complete a Compliance Order (IWMA BR02-01) issued in accordance with the requirements of the Integrated Waste Management Act (Public Resources Code Section 40000 et sec.) by failing to demonstrate a good faith effort to implement the specific tasks listed in the Local Assistance Plan, as required by the Compliance Order.

The hearing will be held as follows:

Date: July 19-20, 2005
Time: 9:30 am
Place: Byron Sher Auditorium
1001 I Street, 2nd Floor
Sacramento, CA 95814

At the hearing, the Board's staff and the City will be given an opportunity to present evidence concerning this subject matter. The City may, but need not, be represented by counsel. If possible, written information to be presented to the Board at the hearing should be furnished to the CIWMB by July 9, 2005 (10 days before the hearing) in order to allow the Board adequate time for review. Attached is a copy of the procedure to be used for the conduct of this hearing (Attachment 2). Also, attached is a summary of the factors to be considered by the Board in making a penalty determination (Attachment 3).

If there are any questions about the hearing facility, please contact Deborah McKee at (916) 341-6550. Any documents to be submitted should be sent to Ms. McKee's attention at the Board's address.


Mark Leary


Date

California Environmental Protection Agency

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California Integrated Waste Management Board

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Arnold
Schwarzenegger

May 25, 2005

Tom Cooke, Mayor
City Hall
P.O. Box 545
Fortuna, CA 95540

Dear Mr. Cooke:

SUBJECT: NOTICE TO THE CITY OF FORTUNA THAT THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD (BOARD) WILL CONDUCT A PUBLIC HEARING ON JULY 19, 2005 TO CONSIDER THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES FOR NON-COMPLIANCE WITH AB 939 (PURSUANT TO PUBLIC RESOURCES CODE SECTION 41825)

The purpose of this letter is to formally notify you of the Board's intent to consider the imposition of administrative civil penalties at its **July 19-20, 2005**, public meeting for failure to implement Compliance Order IWMA BR02-01.

On October 1, 2002, the City of Fortuna (City) was issued Compliance Order IWMA BR02-01. This order required that the City meet and work with Board staff to develop a Local Assistance Plan (LAP) that the City would agree to by December 31, 2002; the City completed this requirement on December 16, 2002. The order also required that the City implement the tasks specified in the LAP by the due dates listed in the LAP. Based on the information provided in the City's LAP updates as well as numerous discussions with City staff, Board staff believes the City has failed to demonstrate a good faith effort to implement all of the specific tasks listed in the LAP by the required due dates.

The Board has scheduled this hearing as part of the scheduled Board Meeting for July 19-20, 2005. Attached is the formal public notice regarding this hearing. A representative of the City of Fortuna is requested to attend to answer any questions from the Board. We appreciate your cooperation on this matter.

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Tom Cooke, Mayor
May 25, 2005
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Should you have any questions about this letter, or the upcoming hearing, please contact Steve SoRelle at (916) 341-6254 or Jill Simmons at (916) 341-6684.

Respectfully,

A handwritten signature in cursive script, appearing to read "Patrick Schiavo".

Patrick Schiavo, Deputy Director
Diversion Planning and Local Assistance Division

Cc: Duane Rigge, City Manager
P.O. Box 545
Fortuna, CA 95540

Public Resources Code Section 41850

(a) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the city, county, or regional agency has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency, of up to ten thousand dollars (\$10,000) per day until the city, county, or regional agency implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 that results in a reduction in the quantity of solid waste diverted by a city, county, or regional agency, the board shall consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element. In addition, the board shall consider only those relevant circumstances that have prevented a city, county, or regional agency from meeting the requirements of this division, including the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city, county, or regional agency that could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages that directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.

(4) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction on the host jurisdiction's ability to meet the requirements of paragraph (2) of subdivision (a) of Section 41780.

(c) In addition to the factors specified in subdivision (b), the board shall consider all of the following:

(1) The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(2) The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) Whether the jurisdiction has requested and been granted an extension to the requirements of Section 41780, pursuant to Section 41820, or an alternative requirement to Section 41780, pursuant to Section 41785.

(d) (1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section "good faith effort" may also include the evaluation by a city, county, or regional agency of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the city, county, or regional agency to meet the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, provided that the city, county, or regional agency has submitted a compliance schedule pursuant to Section 41825, and has made all other reasonable and feasible efforts to implement the programs identified in its source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

CIWMB HEARING PROCEDURE
PUBLIC HEARINGS TO BE HELD IN ACCORDANCE WITH PUBLIC
RESOURCES CODE SECTION 41850

1. CALL TO ORDER AND ANNOUNCE PURPOSE OF HEARING
2. SWEARING IN OF WITNESSES - OATH
3. BOARD STAFF PRESENTATION REGARDING
NON-COMPLIANCE AND RECOMMENDATIONS
 - A. BOARD LEGAL COUNSEL DESCRIPTION OF LEGAL
FRAMEWORK FOR HEARING

RELEVANT STATUTES AND REGULATIONS
REVIEW OF HEARING PROCEDURES
ISSUES TO BE DECIDED
 - B. DIVERSION PLANNING AND LOCAL ASSISTANCE STAFF
PRESENTATION (INCLUDING SUBMISSION OF DOCUMENTS INTO
THE ADMINISTRATIVE RECORD)

RELEVANT REQUIREMENTS OF THE COMPLIANCE ORDER
STATUS OF SUBMITTALS, IF ANY
DESCRIPTION OF ALLEGED FAILURE TO COMPLETE THE
COMPLIANCE ORDER
ANALYSIS OF CRITERIA AND PENALTY RECOMMENDATION
QUESTIONS BY BOARD MEMBERS
4. PRESENTATION BY JURISDICTION

RESPONSE TO STAFF PRESENTATION
SUBMISSION OF DOCUMENTS, IF ANY
QUESTIONS BY BOARD MEMBERS
5. BOARD DELIBERATIONS IN CLOSED SESSION
6. ANNOUNCEMENT OF BOARD DECISION
7. ISSUANCE OF ORDER WITHIN 30 DAYS

Criteria For Penalties For Failure To Complete A Compliance Order

PRC 41850 identifies the following factors to be considered by the Board in making a penalty determination:

1. Good Faith Effort
 - Whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element. "Good faith effort" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.
 - "Good faith effort" may also include the evaluation by a city, county, or regional agency of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the city, county, or regional agency to meet the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, provided that the city, county, or regional agency has submitted a compliance schedule pursuant to Section 41825, and has made all other reasonable and feasible efforts to implement the programs identified in its source reduction and recycling element or household hazardous waste element.
 - In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.
2. Natural disasters that have prevented a jurisdiction from meeting the diversion requirements.
3. Budgetary conditions within a city, county, or regional agency that could not be remedied by the imposition or adjustment of solid waste fees that have prevented a jurisdiction from meeting the diversion requirements.
4. Work stoppages that directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.
5. The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction on the host jurisdiction's ability to meet the requirements of paragraph (2) of subdivision (a) of Section 41780.
6. The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.
7. The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.
8. Whether the jurisdiction has requested and been granted an extension to the requirements of Section 41780, pursuant to Section 41820, or an alternative requirement to Section 41780, pursuant to Section 41785.

Factual Criteria - Staff Analysis

In addition to the above, staff will providing information on the following criteria to the Board to assist in applying the statutory criteria. The following factual criteria are designed to provide relevant information for deciding whether or not to impose a penalty, and, if one is to be imposed, the amount of the penalty:

- 1) Which element was not implemented - Failure to complete a Compliance Order for a SRRE could be considered more significant than failure to complete one for a HHWE since the later is not related to the diversion rate.
- 2) How much of the Compliance Order was not completed – Failure to implement a large number of new programs, or one very significant program could be considered more significant than the failure to implement one of twenty programs.
- 3) Reasons for failure to complete Compliance Order – Staff may be aware in advance of the hearing of reasons offered by the jurisdiction which could be relevant for Board consideration.
- 4) Effect of failure to complete on the achievement of the diversion requirements – This information could be relevant if the jurisdiction has made progress in meeting the diversion requirements although it hasn't completed the Compliance Order.
- 5) Economic situation of the jurisdiction and effect of penalty on implementation - This criteria could be relevant when determining good faith effort. It might also be relevant for determining the amount of the penalty. A \$5,000 a day fine for a small jurisdiction would be more significant than the same fine for a large one.
- 6) Other information - This would be a "catch-all" criteria which would allow staff flexibility to provide information on any other relevant information that is known.